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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/306,790	05/07/1999	GREGORY S. PROVOLNY	68223/0122	3957

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FOLEY & LARDNER
3000 K STREET
SUITE 500
WASHINGTON, DC 200075109

EXAMINER

BANANKHAH, MAJID A

ART UNIT	PAPER NUMBER
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2127

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DATE MAILED: 05/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/306,790

Applicant(s)
Gregory S. POVOLNY Et A.

Examiner
Majid Banankhah

Art Unit
2127



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 1, 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-46 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 6, 7 6) ☐ Other:

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1. This office action is in response to paper number 9, response to the restriction requirement, which was received on May 01, 2003. Applicants electing the claims of "Group III" (claims 37-46) with traverse is acknowledged. Claims 37-46 are presented for examination.

2. Applicants are requested to note PTO-948 concerning notice of draftsman's patent drawing review. However, correction of the noted defect can be deferred until the application is allowed by the examiner. Applicants are reminded of the provision of MPEP 608.02(q) and (r) regarding a separate letter to the chief Draftsman.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

*A person shall be entitled to a patent unless -
(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371 (c) of this title before the invention thereof by the applicant for patent.*

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1)

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filed on or after November 2'), 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 37, and 42 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by U.S. Patent No. 6,175,933 to Cadden.

As per claims 37 and 42 Cadden teach:

- a requesting computer for submitting a request to transfer a file (See, Fig. 3a, item 100, client program initialize file transfer, col. 5, lines 46-57);

- a managing computer for receiving the transfer request and for identifying the location of the data file (See Fig. 2, item 23, and managing distributed complex task executing within a computer environment, col. 4, lines 27-43);

- a source computer, identified as having the data file by the managing computer, for receiving transfer request from the managing computer and transferring the data file to a target location (See, Fig. 2, item 22, file transfer server, col. 4, lines 4-12);

- transfer data file from the source file (Fig. 2, item 21, data being transferred, col. 4, lines 20-26);

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5. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

6. Claims 38-41, and 43-46 are rejected under 35 U.S.C. § 103 as being unpatentable over Cadden (U.S.Pat No. 6,175,933) in view of Roder (All about the Internet, James Roder, 1997).

As per claims 38-41, and 43-46 the reference of Cadden fails to teach the variations of grouping the requesting, managing, source, and target computers into single machine as claimed by applicant. However, the method of isolating critical component among different computers to avoid a single point of failure is well known in the art. Roder teaches that this technique is similar to the age long expression of "not keeping all of your

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eggs in the same basket" (see page 1, paragraph 2). Therefore, it would have been obvious for one ordinary skill in the art at the time the invention was made to distribute the critical functions of different machines in different locations for the purpose of averting the possibility of a single point of failure. The modification would have been obvious because one of the ordinary skill in the art would have been motivated to follow the suggestion of Roder in designing a more secure and reliable transfer system.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Majid A. Banankhah** whose voice telephone number is (703) 308-6903. A voice mail service is also available at this number.

All response sent to U.S. Mail should be mailed to:

Commissioner of Patent and Trademarks

Washington, D.C. 20231

Hand-delivered responses should be brought to Crystal Park Two, 2021 Crystal Drive, Arlington. VA, Six Floor (Receptionist).

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All hand-delivered responses will be handled and entered by the docketing personnel. Please do not hand deliver responses to the Examiner.

All Formal or Official Faxes must be signed and sent to either (703) 308-9051 or (703) 308-9052. Official faxes will be handled and entered by the docketing personnel. The date of entry will correspond to the actual FAX reception date unless that date is a Saturday, Sunday, or a Federal Holiday within the District of Columbia, in which case the official date of receipt will be the next business day. The application file will be promptly forwarded to the Examiner unless the application file must be sent to another area of the office, e.g., Finance Division for fee charging, etc.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Majid Banankhah

May 8, 2003

Majid Banankhah
MAJID BANANKHAH
PRIMARY EXAMINER